

Appln. No. 09/944,009
Amendment dated August 21, 2003
Reply to Office Action mailed May 21, 2003

REMARKS

Reconsideration is respectfully requested.

Claims 1, 3, 4, 7 through 17, and 20 through 25 remain in this application. Claim 9 has been cancelled in this Response, and claims 2, 5, 6, and 18 through 19 have previously been cancelled. No claims have been withdrawn. No claims have been added in this Response.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

Paragraphs 2 and 3 of the Office Action

Claims 1 and 25 have been rejected under 35 U.S.C. §112 (second paragraph) as being indefinite.

The use of the term "substantially" in claim 1 has been objected to as rendering the claim indefinite, and MPEP §2173.05 (d) was cited as the basis for this objection. As that section of the MPEP deals with "Exemplary Claim Language", it is believed that MPEP §2173.05(b) (subsection D) may have been intended as this section deals with "Relative Terminology" and particularly the term "substantially". It is noted that MPEP §2173.05(b) (subsection D) states that the term "substantially" is often used in claims, and only gives examples of where the term was determined to be "definite". The Examiner's attention is drawn particularly to the description of the language used in the third case cited in the subsection, as the term "substantially" was used to modify "equal" in this case. It is submitted that the use of the term "substantially uniform" is similar to "substantially equal", and would be understood by those one of ordinary skill in the art. It is also submitted that the term "uniform" is generally understood as meaning "not varying" (similar to the meaning of "equal" as being "identical" or "equivalent").

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Further, it is submitted that one of ordinary skill in the art, considering the applicant's disclosure (and especially the drawings), would understand what is meant by "substantially equal", and therefore this terminology as used in the claims is definite under the requirements of 35 USC §112.

The above amendment to claim 25 is believed to clarify the requirements of the rejected claim, especially with respect to the particular point identified in the Office Action.

Withdrawal of the §112 rejection of claims 1 and 25 is therefore respectfully requested.

Paragraphs 4 through 7, 9, and 10 of the Office Action

Claims 1, 4, 11, 14, 20 through 21 and 23 have been rejected under 35 U.S.C. §102(b) as being anticipated by Doberne (USPN 3,602,419).

Claims 7 and 12 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Doberne (USPN 3,602,419) in view of York (USPN 4,030,654).

Claims 10 and 22 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Doberne (USPN 3,602,419) as applied to claim 1 above, and further in view of Steigauf (USPN 4,519,536).

Claim 13 has been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Doberne (USPN 3,602,419) as applied to claim 1 above, and further in view of Dudek (USPN 3,734,515).

Claim 1 requires, in part, "wherein the channel of the guide bushing has a length, the channel having a substantially uniform diameter along the length of the guide bushing". The amended language of claim 1 further clarifies that the channel has only one length (and not a portion of the

length), and that the channel has a substantially uniform diameter along that length.

The Doberne reference teaches a nail driver that includes sleeve members 18 and 19. The Office Action alleges that "Examiner disagrees due to Doberne's illustration of a guide bushing having a uniform diameter at the upper portion of the guide bushing, as well as the lower portion of the guide bushing". Thus, it appears that the position in the Office Action is that because the upper portion of the bore in sleeve member 18 is uniform and the diameter of the lower portion of the bore of sleeve member 18 is uniform, that the Doberne reference teaches the above quoted requirement of claim 1 even though the requirement states that the "substantially uniform diameter" extends along the length of the guide bushing.

It is submitted that one of ordinary skill in the art would not consider the diameter of the bore through the sleeve member 18 of Doberne to be substantially uniform along the length of the sleeve member 18. Specifically, Doberne discloses in the drawings that the diameter upper portion of the bore of sleeve member 18 is at least four times greater than the diameter of the lower portion of the bore of sleeve member 18. And this is not merely a quirk in the drawings, as the upper portion of the bore of sleeve 18 is sized to accept a portion or section of the spring 31, while the lower portion of the bore of sleeve member 18 must be smaller to form a shoulder for the spring 31 to bear against to bias the sleeve member 18 outward. Clearly, the intervening shoulder between the upper portion of the bore and the lower portion of the bore of the sleeve member 18 of Doberne must not be uniform so as to form the shoulder against which the spring must be able to bear.

With respect to the statement in the Advisory Action that "'a length', which could be either section of the guide bushing, is disclosed as having a uniform diameter". It appears that the position stated in the Advisory

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Action is based upon the belief that a structure, such as the claimed guide bushing, could have more than one length, or indeed have two lengths.

However, it is submitted that this position (that an object such as the guide bushing could have more than one length) is unsupportable based upon the clear meaning of "length". Submitted herewith is a copy of page 666 of the Merriam-Webster dictionary, 10th Ed., which states as a first definition of "length": "the longer or longest dimension of an object". It is thus submitted that the meaning assigned to "length" in the Advisory Action (that an object such as the guide bushing may have more than one length) is completely inconsistent with the clear meaning of "length" as being "the longer or longest dimension of an object". The dictionary definition of "length" does not permit an object to have more than one length as apparently contended in the Advisory Action.

It is therefore submitted that the Doberne teaching would not lead one of ordinary skill in the art to the applicant's claimed invention as defined in claim 1, especially with the requirements set forth above, and therefore it is submitted that claim 1 is allowable over the prior art. Further, claims 4, 7, 10 through 14, and 20 through 23 depend from claim 1 and thus also include the requirements discussed above, are therefore also submitted to be in condition for allowance as it is submitted that no combination of Doberne with the York, Steigauf, and Dudek references would lead one of ordinary skill in the art to the claimed requirements of these dependent claims.

With respect to claim 20, which requires "the uniform diameter of the channel of the guide bushing is slightly larger than a diameter of the forward end of the drive punch", it is noted that, in addition to the remarks above, the selective partitioning of the bore of the sleeve member 18 of Doberne in the Office Action just emphasizes the fact that Doberne employs a larger diameter portion of the bore of the sleeve member to accept a section of the spring while employing a smaller diameter section of the bore

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of sleeve member 18 to accept the shank 27. It is submitted that these disparate functions of the bore of the sleeve member 18 just lend further credence to the fact that the diameter of the bore of Doberne is not substantially uniform along the length of the sleeve member 18.

With respect to claim 21, which requires that "the shroud and the slidable guide bushing have an overall length, a length of the slidable guide bushing comprising approximately one-third of the overall length of the shroud and guide bushing", it is noted that the Office Action attempts to define only the "forward most" portion of the sleeve member 18 as the claimed guide bushing, where previously the Office Action asserts that the entire sleeve member 18 forms the claimed guide bushing. (See, for example, the marked-up copy of the Doberne reference where the upper portion of sleeve member 18 is labeled as the claimed "guide bushing".) It is clear that in the Doberne teaching, the movable sleeve member 18 is two thirds of the overall length of the sleeve members 18 and 19 of Doberne, which is completely opposite of the claim 21 requirements.

Withdrawal of the §102(b) rejection of claims 1, 4, 11, 14, 20 through 21 and 23 is therefore respectfully requested.

Paragraph 8 of the Office Action

Claims 8 and 9 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Doberne (USPN 3,602,419) in view of Hsu (USPN 4,830,254).

The requirements of claim 9 have been incorporated into claim 8, and therefore claim 9 has been cancelled.

Claim 8 requires "wherein the muffling means comprising a muffler member mounted on the rear portion of the shroud, the muffler member having a bore in communication with the bore of the shroud, *an annular*

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space being formed about the bore of the muffler member for extending about a barrel portion of the hammer tool when the shroud is mounted on the hammer tool, and a muffling material for absorbing vibration *being positioned in the annular space for extending about the barrel portion* when the shroud is mounted on the hammer tool” (emphasis added). This feature of the claimed invention places the muffling material in close proximity, if not contact, with the barrel portion of the hammer tool to help minimize the transfer of vibration from the hammer tool to the invention, and vice versa.

The Hsu reference teaches a driving system in which a shield 76 extends around the exterior of the barrel 12 of the driving system, while the void identified (by the reference number 12) in the Office Action is located either in the interior of the barrel 12, or between two portion of the barrel 12 (crossed by the reference arrow in Figure 1). In either case, it is clear that the shield 76 is not positioned in the void of barrel 12, as the shield 76 is exterior to, and extends outwardly from, the exterior of the barrel 12 and the barrel end replacement 44. It is submitted that this relationship shown in the figures of the Hsu reference would not lead one of ordinary skill in the art to the claim 8 requirement that “a muffling material for absorbing vibration [is] positioned in the annular space for extending about the barrel portion”.

Withdrawal of the §103(a) rejection of claim 8 is therefore respectfully requested.

Paragraph 11 of the Office Action

Claim 17 has been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Doberne (USPN 3,602,419) in view of Gupta (USPN 4,139,137) Steigauf (USPN 4,519,536).

It is noted that claim 17 includes substantially the same requirements as claim 3 (including claim 1) which as been indicated as being allowable

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over the prior art, and therefore claim 17 is submitted to be allowable over the prior art.

Withdrawal of the §103(a) rejection of claim 17 is therefore respectfully requested.

Paragraph 13 of the Office Action


Claims 15 through 16 and 24 have been allowed.

CONCLUSION

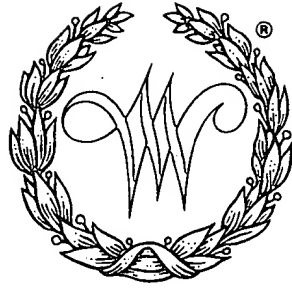
In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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EXHIBIT A

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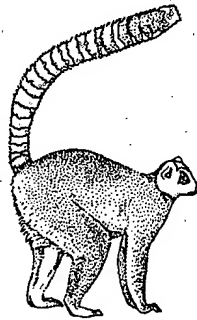
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lemma \lĕ-mă\ (Gk, husk, fr. *lepein* to peel — more at **LEPER**) (1906): the lower of the two bracts enclosing the flower in the spikelet of grasses
lem-ming \lĕ-miŋ\ *n* [Norw] (1713): any of various small short-tailed furry-footed rodents (as genera *Lemmus* and *Dicrostonyx*) of circumpolar distribution that are notable for the recurrent mass migrations of a European form (*L. lemmus*) which often continue into the sea where vast numbers are drowned — **lem-ming-like** \-lik\ *adj*
lem-nis-cate \lĕ-m-nis-kət\ *n* [NL *lemniscata*, fr. fem. of *L. lemniscatus* with hanging ribbons, fr. *lemniscus*] (ca. 1781): a figure-eight shaped curve whose equation in polar coordinates is $p^2 = a^2 \cos 2\theta$ or $p^2 = a^2 \sin 2\theta$
lem-nis-cus \lĕ-m-nis-kəs\ *n*, *pl* -nis-ci \-nis-ki, -kē; -ni-si [NL, fr. L. ribbon, fr. Gk *lemniskos*] (ca. 1905): a band of fibers and esp. nerve fibers — **lem-nis-cal** \-kəl\ *adj*
lem-on \lĕ-mən\ *n* [ME *lymon*, fr. MF *limon*, fr. ML *limon*, *limo*, fr. Ar *laymūn*] (15c) 1 *a*: an acid fruit that is botanically a many-seeded pale yellow oblong berry and is produced by a small thorny tree (*Citrus limon*) 2 *b*: a tree that bears lemons 3 *c*: one (as an automobile) that is unsatisfactory or defective — **lem-on-ly** \lĕ-mə-nē\ *adj*
lemon *adj* (1598) 1: of the color lemon yellow 2 *a*: containing lemon 2 *b*: having the flavor or scent of lemon
lem-on-ade \lĕ-mə-nād\ *n* (1604): a beverage of sweetened lemon juice mixed with water
lemon balm *n* (ca. 1888): a bushy perennial Old World mint (*Melissa officinalis*) often cultivated for its fragrant lemon-flavored leaves
lem-on-grass \lĕ-mən-gras\ *n* (1801): a grass (*Cymbopogon citratus*) of robust habit that grows in tropical regions, is used as an herb, and is the source of an essential oil with an odor of lemon or verbena
lemon law *n* (1982): a law offering car buyers relief (as by repair, replacement, or refund) for defects detected during a specified period after purchase
lemon shark *n* (1942): a medium-sized requiem shark (*Negaprion brevirostris*) of the warm Atlantic that is yellowish brown to gray above with yellow or greenish sides
lemon sole *n* (1876): any of several flatfishes and esp. flounders: as *a*: a bottom-dwelling flounder (*Microstomus kitt*) of the northeastern Atlantic that is an important food fish *b*: WINTER FLOUNDER
lemon yellow *n* (1807): a brilliant greenish yellow color
lem-pi-ra \lĕ-m-pir-ə\ *n* [AmerSp, fr. *Lempira*, 16th cent. Indian chief] (ca. 1934) — see **MONEY** table
le-mur \lĕ-mər\ *n* [NL, fr. L. *lemures*, pl. ghosts] (1795): any of various arboreal chiefly nocturnal mammals that were formerly widespread but are now largely confined to Madagascar, are related to the monkeys but are usu. regarded as constituting a distinct superfamily (Lemuroidea), and usu. have a muzzle like a fox, large eyes, very soft woolly fur, and a long furry tail
le-mu-res \lĕ-mə-rəs, \lĕ-m-yə-rəs\ *n* *pl* [L] (1555): spirits of the unbred dead exorcised from homes in early Roman religious rites
lend \lĕnd\ *vb* **lent** \lĕnt\; **lend-ing** [ME *lenen*, *lenden*, fr. OE *lĕnan*, fr. *lĕn* loan — more at **LOAN**] *vi* (bef. 12c) 1 *a*: to give for temporary use on condition that the same or its equivalent be returned *b*: to let out (money) for temporary use on condition of repayment with interest 2 *a*: to give the assistance or support of: AFFORD, FURNISH (a dispassionate and scholarly manner which ~s great force to his criticisms — *Times Lit. Supp.*) *b*: to adapt or apply (oneself) readily: ACCOMMODATE (a topic that ~s itself admirably to class discussion) ~ *vi*: to make a loan **usage** see **LOAN** — **lend-able** \lĕn-də-bəl\ *adj* — **lend-er** *n*
lending library *n* (1708): a library from which materials are lent; esp.: RENTAL LIBRARY
lend-lease \lĕnd-lēs\ *n* [U.S. Lend-Lease Act (1941)] (1941): the transfer of goods and services to an ally to aid in a common cause with payment made by a return of the original items or their use in the cause or by a similar transfer of other goods and services — **lend-lease** *vi*
length \lĕŋ(k)th, \lĕn(t)th\ *n*, *pl* **lengths** \lĕŋ(k)ths, \lĕn(t)ths, \lĕŋ(k)s\ [ME *lengthe*, fr. OE *lengthu*, fr. *lang* long] (bef. 12c) 1 *a*: the longer or longest dimension of an object *b*: a measured distance or dimension (10 feet in ~) — see **METRIC SYSTEM** table, **WEIGHT** table *c*: the quality or state of being long 2 *a*: duration or extent in time *b*: relative duration or stress of a sound 3 *a*: distance or extent in space *b*: the length of something taken as a unit of measure (his horse led by a ~) 4: the degree to which something (as a course of action or a line of thought) is carried — often used in pl. (went to great ~s to learn the truth) 5 *a*: a long expanse or stretch *b*: a piece constituting or usable as part of a whole or of a connected series: SECTION (a ~ of pipe) 6: a vertical dimension of an article of clothing — at length 1: FULLY, COMPREHENSIVELY 2: at last; FINALLY
length-en \lĕŋ(k)-thən, \lĕn(t)-\ *vb* **length-ened**; **length-en-ing** \lĕŋ(k)-th-niŋ, \lĕn(t)-th-; \lĕŋ(k)-thə-, \lĕn(t)-\ *vi* (14c): to make longer ~ *vi*: to grow longer **syn** see **EXTEND** — **length-en-er** \lĕŋ(k)-th-nər, \lĕn(t)-th-; \lĕŋ(k)-thə-, \lĕn(t)-\ *n*
length-ways \lĕŋ(k)-th-wāz, \lĕn(t)-th-\ *adv* (1599): LENGTHWISE
length-wise \-wīz\ *adv* (ca. 1580): in the direction of the length: LONGITUDINALLY — **length-wise** *adj*
lengthy \lĕŋ(k)-thē, \lĕn(t)-\ *adj* **length-i-er**; -est (1689) 1: protracted excessively: OVERLONG 2: EXTENDED, LONG — **length-i-ly** \-thə-lē\ *adv* — **length-i-ness** \-thē-nəs\ *n*



lemon 1: branch with fruit and flowers



lemur

len-ience \lĕ-nyan(t)s, -nē-an(t)s\ *n* (1796): LENIENCY
len-ien-ty \lĕ-nē-an(t)-sē, -nyən(t)-sē\ *n*, *pl* -cies (1780) 1: the quality or state of being lenient 2: a lenient disposition or practice **syn** see **MERCY**
len-ient \lĕ-nē-ant, -nyant\ *adj* [L. *lenient*, *leniens*, prp. of *lenire* to soften, soothe, fr. *lenis* soft, mild; prob. akin to Lith *lenas* tranquil — more at **LET**] (1652) 1: exerting a soothing or easing influence: relieving pain or stress 2: of mild and tolerant disposition; esp.: INDULGENT — **len-ient-ly** *adv*
Leni-Len-a-pe or **Len-ni-Len-a-pe** \lĕ-nē-lĕ-nā-pē, -lā-nā-pē\ *n* [Delaware (Unami dialects) *lani-lanape*] (ca. 1782): DELAWARE
Le-nin-ism \lĕ-nā-ni-zəm\ *n* (1918): the political, economic, and social principles and policies advocated by Lenin; esp.: the theory and practice of communism developed by or associated with Lenin — **Le-nin-ist** \-nist\ *n* or *adj* — **Le-nin-ite** \-nit\ *n* or *adj*
len-is \lĕ-nās, \lā-\ *adj* [NL, fr. L. mild, smooth] (ca. 1897): produced with an articulation that is lax in relation to another speech sound (it in gutter is ~, it in toe is fortis)
len-i-tion \lā-ni-shən\ *n* [L. *lenire*] (1912): the change from fortis to lenis articulation
len-i-tive \lĕ-nā-tiv\ *adj* [ME *lenitif*, fr. MF, fr. ML *lenitivus*, fr. L. *lenitus*, pp. of *lenire*] (15c): alleviating pain or harshness: SOOTHING — **len-i-tive** *n* — **len-i-tive-ly** *adv*
len-i-ty \lĕ-nā-tē\ *n* (1548): the quality or state of being lenient: CLEMENCY
le-no \lĕ-(n)ō\ *n* [perh. fr. F *linon* linen fabric, lawn, fr. MF *lin* flax, linen, fr. L. *linum* flax] (1821) 1: an open weave in which pairs of warp yarns cross one another and thereby lock the filling yarn in position 2: a fabric made with a leno weave
lens *also* **lense** \lĕnz\ *n* [NL *lent*, lens, fr. L. *lentil*; fr. its shape] (1693) 1 *a*: a piece of transparent material (as glass) that has two opposite regular surfaces either both curved or one curved and the other plane and that is used either singly or combined in an optical instrument for forming an image by focusing rays of light *b*: a combination of two or more simple lenses *c*: a piece of glass or plastic used (as in safety goggles or sunglasses) to protect the eye 2: a device for directing or focusing radiation other than light (as sound waves, radio microwaves, or electrons) 3: something shaped like a double-convex optical lens (~ of sandstone) 4: a highly transparent biconvex lens-shaped or nearly spherical body in the eye that focuses light rays (as upon the retina) — see **ILLUSTRATION** 5: something that facilitates and influences perception, comprehension, or evaluation (the author's own ~ seems blurred by bias — Seymour Topping) — **lensed** \lĕnzd\ *adj* — **lens-less** \lĕnz-ləs\ *adj*
lens vi (1942): to make a motion picture of: FILM
lens-man \-mən, -man\ *n* (1938): PHOTOGRAPHER
Lent \lĕnt\ *n* [ME *lente* springtime, Lent, fr. OE *lenten*; akin to OHG *lentin* spring] (13c): the 40 weekdays from Ash Wednesday to Easter observed by the Roman Catholic, Eastern, and some Protestant churches as a period of penitence and fasting
len-ta-men-te \lĕn-tā-men-(t)ē\ *adv* or *adj* [It, fr. *lento* slow] (1724): LENTO
len-tan-do \lĕn-tān-(d)ō\ *adv* or *adj* [It] (ca. 1847): becoming slower — used as a direction in music
Lenten \lĕn-tĕn\ *adj* (bef. 12c): of, relating to, or suitable for Lent; esp.: MEAGER (~ fare)
len-tic \lĕn-tik\ *adj* [L. *lentus* sluggish] (ca. 1938): of, relating to, or living in still waters (as lakes, ponds, or swamps) — compare **LOTIC**
len-tic-el \lĕn-tĕ-sel\ *n* [NL *lenticella*, dim. of L. *lent*, lens *lentil*] (ca. 1864): a loose aggregation of cells which penetrates the surface (as of a stem) of a woody plant and through which gases are exchanged between the atmosphere and the underlying tissues
len-tic-u-lar \lĕn-ti-kyə-lər\ *adj* [ME, fr. L. *lenticularis* lentil-shaped, fr. *lenticula* lentil] (15c) 1: having the shape of a double-convex lens 2: of or relating to a lens 3: provided with or utilizing lenticles (a ~ screen)
len-ti-cule \lĕn-ti-kyū(ə)\ *n* [L. *lenticula*] (1942) 1: any of the minute lenses on the base side of a film used in stereoscopic or color photography 2: any of the tiny corrugations or grooves molded or embossed into the surface of a projection screen
len-til \lĕn-tl\ *n* [ME, fr. OF *lentille*, fr. L. *lenticula*, dim. of *lent*, lens] (13c) 1: a widely cultivated Eurasian annual leguminous plant (*Lens culinaris*) with flattened edible seeds and leafy stalks used as fodder 2: the seed of the lentil
len-tis-si-mo \lĕn-ti-si-mō\ *adv* or *adj* [It, superl. of *lento*] (ca. 1903): at a very slow tempo — used as a direction in music
len-ti-vi-rus \lĕn-ti-vi-rəs\ *n* [NL, fr. L. *lentus* slow + NL *virus*] (1982): any of a group of retroviruses that cause slowly progressive often fatal animal diseases
len-to \lĕn-(t)ō\ *adv* or *adj* [It, fr. *lento*, adj., slow, fr. L. *lentus* pliant, sluggish, slow — more at **LITHE**] (ca. 1724): at a slow tempo — used esp. as a direction in music
Leo \lĕ-(d)ō\ *n* [L. (gen. *Leonis*), lit., lion — more at **LION**] 1: a northern constellation east of Cancer 2 *a*: the 3rd sign of the zodiac in astrology — see **ZODIAC** table *b*: one born under this sign — **Le-o-nine** \lĕ-ō-nīn\ *adj*
le-one \lĕ-ōn\ *n*, *pl* **leones** or **leone** [Sierra Leone] (1964) — see **MONEY** table
Le-o-nid \lĕ-ō-nid\ *n*, *pl* **Leonids** or **Le-on-i-des** \lĕ-ō-nā-dēz\ [L. *Leon*, *Leo*; fr. their appearing to radiate from a point in Leo] (1876): any of the meteors in a meteor shower occurring every year about November 14
le-o-nine \lĕ-ō-nīn\ *adj* [ME, fr. L. *leoninus*, fr. *leon*, *leo*] (14c): of, relating to, suggestive of, or resembling a lion
leop-ard \lĕ-pərd\ *n* [ME, fr. OF *leupart*, fr. LL *leopardus*, fr. Gk *leopardos*, fr. *leōn* lion + *pardos* leopard] (13c) 1: a large strong cat (*Panthera pardus*) of southern Asia and Africa that is adept at climbing and is usu. tawny or buff with black spots arranged in rosettes — called also **panther** 2: a heraldic representation of a lion passant guardant — **leop-ard-ess** \-pərd-əs\ *n*
leopard frog *n* (1839): a common No. American frog (*Rana pipiens*) that is bright green or brown with large black white-margined blotches on the back; also: a similar frog (*R. sphenoccephala*) of the southeastern U.S.